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2019/00718/A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 19th September 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE LAVENDER

and

MR JUSTICE NICKLIN

R E G I N A

- v -

THOMAS NEATE

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Non-Counsel Application

J U D G M E N T

Thursday 19th September 2019

LADY JUSTICE NICOLA DAVIES: I shall ask Mr Justice Lavender to give the judgment of the court.

MR JUSTICE LAVENDER:

1. This is a renewed application for leave to appeal against sentence following refusal by the single judge.

2. On 31st January 2019, in the Crown Court at Sheffield, the applicant was sentenced for six offences. On one count of robbery, he was given an extended sentence of sixteen years, comprising a custodial term of thirteen years and an extended licence period of three years. The judge imposed concurrent sentences for each of the other counts.

3. On 29th May 2018, in Rochdale, the applicant and an accomplice robbed a van driver of his van. In the course of the robbery, the applicant bit the van driver on the back of the head and threatened to stab him if he did not give them the keys to the van. The van driver was bruised and grazed, and he had a raised bump on his head from the bite.

4. On 21st July 2018, the applicant was party to an affray in Hunters Lane in Rochdale. As part of the affray, the applicant kicked a woman who was on the ground and attempted to kick a second woman. He ran away from the police and threw a chair at the head of a police officer, hitting his arm and shoulders. He was only arrested after a struggle and the threatened use of tasers.

5. Because he was injured, the applicant was taken to hospital, where he managed to removed

his wrist ties. As he was being taken to the police van he ran away, thereby committing the offence of escaping from lawful custody. Despite the deployment of police dogs and a helicopter, he could not be caught.

6. On 7th August 2018, the applicant committed another robbery, this time in Sheffield. The applicant and two others went into a shop. The applicant had his face covered and his hood up. He said to the shop assistant, Ms Waterhouse, "Give me the money". He was holding a large knife above his head and he moved the knife towards her. He was to plead guilty to the offence of having with him an article with a blade or point. Ms Waterhouse grabbed his wrist and there was a tussle. She backed away. Out of fear she lost control of her bladder. The applicant jumped over the counter and held the knife to her neck. She had been cashing up and he found about £2,000 in bags which he and his two accomplices took.

7. This offence had a considerable effect on Ms Waterhouse. There was no medical report, but she stated that she was diagnosed with PTSD and given antidepressants for about four months, and that for about six weeks she could not be at work alone.

8. The applicant was arrested on 9th August 2018. He eventually pleaded guilty as follows. There were separate indictments for the Sheffield offences, the Rochdale robbery, the affray and the escape. The plea and trial preparation hearing for the Sheffield indictment took place on 7th September 2018, and the applicant pleaded not guilty to both counts. The plea and trial preparation hearing for the other three indictments, which were subsequently combined, took place on 16th November 2018. On 4th December 2018, in the Crown Court at Manchester, the applicant pleaded guilty to the Rochdale robbery and to escaping from lawful custody, but not guilty to affray. The sentencing judge said that she would give 25 per cent credit for his guilty pleas on this occasion, as he had indicated these pleas a week after the plea and trial preparation

hearing.

9. On 18th December 2018, in the Crown Court at Sheffield, the applicant pleaded guilty to the Sheffield robbery and to having with him a bladed article. The sentencing judge said that she would give 18 per cent credit for those pleas, which were indicated on 22nd November, some time after the plea and trial preparation hearing on 7th September 2018.

10. Then on 19th December 2018, in the Crown Court at Manchester, he pleaded guilty to the affray. All of the non-Sheffield matters were transferred to Sheffield. The sentencing judge said that she would give the applicant 20 per cent credit for his guilty plea to affray, as he did not plead guilty until a month after the plea and trial preparation hearing.

11. The concurrent sentences imposed on 31st January 2019 were as follows: four years' imprisonment for the Rochdale robbery; fourteen months' imprisonment for the affray; ten months' imprisonment for the escape from lawful custody; eighteen months' imprisonment for having a bladed article; and the sixteen year extended sentence (already mentioned) for the Sheffield robbery. The judge said that she would have imposed a sentence of eight years' imprisonment (discounted from ten years) for this offence if it had stood alone. In addition, the applicant was in breach of a suspended sentence of seventeen months' imprisonment, imposed on 16th March 2018 for criminal damage, two offences of battery, and threatening his former partner with a bladed article. That sentence was activated, but ordered to be served concurrently with the other sentences.

12. The applicant was 26 years old when he was sentenced. He had been convicted for 76 previous offences, including robbery, burglary, theft, aggravated vehicle taking, assault, affray, using threatening, abusive or insulting words or behaviour, and breaches of court orders.

13. The judge considered all of the relevant guidelines. She placed the Rochdale robbery in category 2B and the Sheffield robbery in category 1A in the guidelines for street and less sophisticated robberies, for which the starting point is eight years' custody, and the range from seven to twelve years.

14. The first proposed ground of appeal is that the judge was wrong to place the Sheffield robbery in category 1A because there was no serious physical and/or psychological harm caused to the victim. We consider that this ground is unarguable. Although a medical report would have been preferable, Ms Waterhouse's statement made clear that she had sustained psychological harm which could properly be described as serious, albeit not as serious as in some other cases.

15. The second proposed ground of appeal is that the judge failed to take adequate account of the totality principle, which required the judge to impose a total sentence which reflected all of the applicant's offending behaviour, but which was no more than was just and proportionate.

16. Given the judge's conclusion that discounts of 18 to 25 per cent were appropriate, the custodial term of thirteen years was equivalent to about sixteen and a half years before discount. The applicant invited the court to consider the difference between the custodial term of thirteen years and the sum of the individual sentences which the judge imposed or said that she would have imposed. Including the suspended sentence, but excluding the bladed article offence, the sum is fifteen years and five months. The applicant invited us to disregard for this purpose the sentences for the affray and the escape from lawful custody, but we see no good reason for doing so. The affray was a free-standing offence, as was the escape from lawful custody. The judge treated as an aggravating feature of the Sheffield robbery the fact that the applicant was on

the run, but the escape itself remained a separate offence. Other judges might have arrived at a lower custodial term, but we do not consider that the custodial term of thirteen years was either manifestly excessive or wrong in principle.

17. The third proposed ground of appeal is that the judge was wrong to conclude that the applicant was dangerous, i.e. that there was a significant risk to members of the public of serious harm occasioned by the commission of further specified offences by the applicant. In particular, the applicant contends that the judge ought not to have reached that conclusion without first obtaining a pre-sentence report which addressed the issue of dangerousness. No such report was obtained in this case, although the sentencing hearing was twice adjourned. On the other hand, no further adjournment was sought when the judge indicated that she was considering the issue of dangerousness.

18. The judge was required by section 156(3)(a) of the Criminal Justice Act 2003 to obtain such a report, unless, as provided for in section 156(4), she considered it unnecessary to do so. Given the violent and persistent nature of the applicant's offending, which was committed while he was subject to a suspended sentence and which was not even prevented by his arrest, we consider that the judge was entitled on the particular facts of this case to conclude that a report was unnecessary. However, we are clear that if a finding of dangerousness is to be a consideration of the court, the prudent course is to order a pre-sentence report. Not only is the report of assistance to the court, it allows the defendant and those who represent him better to understand and address the issue of dangerousness. Our refusal of this renewed application should not be taken as encouraging any court to proceed to a finding of dangerousness and any consequent sentence in the absence of a pre-sentence report.

19. Accordingly, and for all these reasons, this renewed application is refused.

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